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Jailed for birth control

[New York?]

1917

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Box 43

THE TRIAL
OF
WILLIAM SANGER

SEPTEMBER 10th, 1915



With an Introduction

By

JAMES WALDO FAWCETT

May 16 1917 GFL

JAILED FOR BIRTH CONTROL

THE TRIAL OF WILLIAM SANGER

September 10, 1915

Edited by JAMES WALDO FAWCETT

1917

INTRODUCTION.

THE more I see and hear of "radicals," "rebels," "insurgents," and "agitators," the more I appreciate and understand William Sanger.

I have had the happiness of William Sanger's friendship since the day of his trial. I have been with him in many different scenes and through many different circumstances. I have shared some joys with him, and some sorrows.

I think I can truthfully say that I know and understand William Sanger better than any other man extant. Perhaps it is for this very reason that I would hesitate to attempt to interpret him to anyone.

William Sanger is an artist, not a scientist. He is a revolutionist, not a reformer. He thinks in large dimensions; his forte of expression is that of pen, pencil and brush. He is a living picture of fine qualities and excellent impulses. He is not easily understood; he is not that shallow. One finds in him in proportion as one brings to him. If one's own feelings are fine and keen, he will respond in kind. So it is that he has few but remarkably faithful friends, and many and bitter enemies.

I have never known William Sanger to express any approval of anything anti-social; I have never found him tolerant of evil, of oppression, of injustice, of bitterness, or of unbrotherly struggle. But I have always found in him a ready sympathy and understanding of misery, unhappiness and poverty. He is such a man as children love, and tyrants hate.

There is little more to say. Such a character requires little formal introduction.

JAMES WALDO FAWCETT.

New York City, January 23, 1917.

BIRTH CONTROL.

By WILLIAM SANGER

Birth Control is the message of a new social philosophy dedicated primarily to the proposition of voluntary motherhood and racial betterment.

By its advent a new epoch is dawning in the affairs of men. A new race shall arise, released from the dead weight of poverty, disease, almshouses, asylums, reformatories and prisons. It shall be a race more dynamic in its pro-social impulses, more keen and alert to digest ideas, a race arising from a finer mother- and father-hood, from firesides where children have been wanted and welcomed and reared in an environment of human tenderness and all that that implies. Men and women, having reached maturity in such relations, shall have a purpose in life organically related to the cosmos and in tune with the universe.

REPORT OF MR. SANGER'S TRIAL.

[FROM "THE NEW YORK CALL," SEPT. 11TH, 1915.]

William Sanger's Full Statement, Banned by Court,
Is Printed Here.

*On Trial in the Court of Special Sessions, New York City, Sept.
10th, 1915, for having given a Pamphlet by his Wife on
Family Limitation to a Comstock Agent.*

I ask you to allow me to make a statement, not as a lawyer, but as the defendant in this case. I engaged a lawyer when I was first arrested. I fought, in two courts, for a jury trial, and was denied what I regard as a constitutional right. I do not believe that I shall get any justice in the courts. I have decided to dispense with a lawyer, and to come into court unrepresented except by this statement.

I am charged with having violated a statute of the Penal Law of this State which makes it a crime to furnish information regarding the prevention of conception. The District Attorney has brought into court a Comstock agent, to whom, it is charged, I gave a copy of my wife's pamphlet on "Family Limitation." I do not deny that I gave the pamphlet. I frankly admit it. Nor will Mr. Bamberger, the Comstock agent, deny that he came to me under a false name and obtained the pamphlet under false pretences.

I admit that I broke the law, and yet I claim that, in every real sense, it is the law, and not I, that is on trial here today.

GIVES STORY OF CASE.

The immediate facts of the case and of my subsequent arrest are as follows: On December 18th a man came to my studio in my absence and left a card which gave the name of Mr. Heller, dealer in rubber goods and sundries. The following day, early in the morning, the man presented himself at my studio, and he proved to be this Mr. Heller who left his card the previous day. He asked if I were Sanger, to which I replied in the affirmative. He stated that he knew of two books by Mrs. Sanger, "What Every Girl Should Know" and "What Every Mother Should Know," that he enjoyed reading them very much and that he was

in sympathy with her work. He then asked me for a pamphlet called "Family Limitation," written by Mrs. Sanger. I told him that I did not have any, as far as I knew. He seemed insistent, and finally said that if he could only get a copy of this pamphlet he would have it printed in different languages to distribute amongst the poor people he worked with and did business with. I asked him whether he was the Mr. Heller that Mrs. Sanger knew and he replied that he was. I then told him that he would have to wait, and I would try and find a pamphlet for him. Thereupon I went and looked through the various books and pamphlets left in my care and found several copies, one of which I gave to him, and sent him, as I supposed, on his way rejoicing.

ARREST FOLLOWED AGENT'S VISIT.

The incident vanished from my mind entirely until a month later, when I was arrested by Anthony Comstock for violating the law against giving out "obscene, lewd, lascivious, filthy, indecent and disgusting" literature.

I was trapped into handing the pamphlet in question to an agent of Comstock. This self-appointed censor of our morality and his agent did not hesitate to use criminal methods to make a criminal out of me.

But I deny that I am a criminal. From my own inward feeling I did not wrong. Then why should I recognize the right of the State to brand me as a criminal?

I cannot claim the honor of connection with the writing, publication or circulation of this pamphlet. But it is true just the same that I had original convictions on this most vital subject years ago. I understand I have the right to summon six witnesses to testify as to my good character. I waive the privilege of getting character witnesses because I don't wish to stalk behind the reputation or standing of any one in this community. I stand here alone—on my own individuality as expressed in this statement.

I have lived here for thirty-five years. My life is an open book to anyone. I am the father of three children, and three lovely ones. Therefore, I feel I need no credentials from anyone.

BOOK IS NOT OBSCENE.

If this pamphlet on "Family Limitation" is considered obscene and indecent, then all the medical books on the subject are also obscene and indecent. There are books sold today at high prices by reputable publishers to anyone who has the price.

I was offered a suspended sentence by Comstock if I pleaded guilty. On the way to the Magistrate's Court on the day of my arrest, Comstock asked me three times the whereabouts of Mrs. Sanger. When I confronted him with the statement that he had no legal or moral right to ask me that question, there was no reply, but a cynical smile. The whole gist of his manner was that he had made a mistake in arresting me and wished to squirm out of it to save his face and his job by gracefully handing me a suspended sentence. He seemed peculiarly insistent, making the inquiry twice, the second time stating that he had prosecuted over thirty-nine hundred cases in his career and was invariably successful, and that, if he recommended to the court a suspended sentence, it would invariably comply. I told him that I would plead not guilty and not receive a suspended sentence from him under any consideration.

The fact is that Comstock does not dare to attack the more prominent, those able to withstand the expense of prolonged legal encounters, but he necessarily attacks me in the silence of my studio, because he thought that I would succumb at my arrest, plead guilty, and add another to his list of victims in his annual report.

MRS. SANGER IS A PIONEER.

I am proud to be identified with the work of that noble woman, Margaret Sanger. Even if she were not my wife I would consider it an honor to link my name with hers. I stand for everything in this pamphlet as written by this illustrious pioneer. I absolutely deny that there is anything obscene, indecent, lascivious or disgusting in this pamphlet.

Who is the man responsible for the obscenity law under which I am charged? The state of mind called Comstockery and Comstock in particular are responsible for this statute.

The facts are that this man who has received such an extraordinary power from the State is in reality a religious and pornographic fanatic. He is the victim of an incurable sexphobia. He believes he has a mission to extirpate what he calls obscenity by decoy letters, by bearing false witness. It makes no difference what the means is—that is a minor matter. The end to him justifies the means. The result has been suppression of investigation, experiment and expression.

Torquemada and Loyola attempted what Comstock has attempted, and failed, and time has linked their names with the Great Delusion—ending in fagots and the stake. The present inquisitor has not learned the lesson of history. Like the other inquisitors, he also has a mission; he also has energy and determination; but he is ignorant and without the intelligence to distin-

guish between pornography and scientific information. Sincerity is a great virtue, if it has brains and a fine sense of justice behind it. Without brains to guide it and the impulse of justice to temper it, it is bound to be a scourge to the race.

SCORES MODERN WITCHCRAFT.

The race has long ago emerged from the era of witchcraft, but yet today witchcraft exists in a different form, in the shape of obscenity laws. Obscenity statutes cannot be regarded in the same light as statutes dealing with concrete offences, such as criminal libel, arson, or the like, because they are based on a state of mind. Things obscene can only be detected when we think in terms of deformed mental process of reasoning. Obscenity, like witches, will cease to exist when men cease to believe in it.

The obscenity statute is therefore based on a belief rooted in the meanest, most cruel and ignorant censorship since the days of witchcraft. Shall any man or woman be liable to a fine or imprisonment based on a belief more or less religious and on the attitude of mind of those mentally deformed?

It can be shown that the framers of this obscenity statute knew nothing of the untold hardships endured by the workers in the past, because information in regard to birth control was withheld from them. They were indifferent to or sublimely ignorant of the fact that the statute, with others of the same character, were and are the message of death to the workers of this generation. It was a white-livered morality they had in mind and not the crying need of humanity.

WORKERS NEED BIRTH CONTROL.

The result of the enforcement of the law is that it has caused untold hardships to that stratum of society least able to help itself. All because of this obscenity law and others, the relief asked for by the workers is denied them and the giving out of information on birth control is made a prison offence. But the workers keep on having children without any means for their support. The breeding, and not the rearing, of children goes on. These children come into the world not really wanted, because there is no place for them. They are shoved out in the streets, collect in gangs, are swatted like flies in places they call homes, largely because of these infamous obscenity laws. The homes of the very poor have been made brothels, instead of havens, for the rising generation, where these children might have a chance to grow up in beauty and love, basking in the sunshine of their

parentage. It has been shown that among families earning 500 dollars a year one out of every four dies before he reaches one year of age. How about the unemployed? Their children become destitute and are thrown into orphan asylums and the like. If birth control information was not declared obscene, indecent, lascivious and disgusting, fewer and better children would be born and fewer children would die.

BIRTH KILLS MOTHERS.

Mainly on account of the law, thousands of women die yearly of miscarriage and abortion. We view with horror and righteous rage such disasters as the loss of life in the "Lusitania" tragedy, but yet pursue the even tenor of our way for the reason that it is not generally known that so many women yearly go to their untimely graves because the imparting of birth control information is declared obscene and indecent. The professional abortionist, midwives and other quacks would be driven from their practice if proper information in regard to birth control was disseminated. Eight thousand and odd women of the State lose their lives every year, but the quacks still remain to ply their vocation.

Comstockery, Prudery and its offspring, Ignorance, stalk behind every miscarriage and abortion. The State has given power to an irresponsible official of an irresponsible society; therefore the State is the real malefactor, the law is on trial, not I. Every fibre of my being revolts against the inhuman spectacle of insidious murder which this statute carries in its wake.

All because of the prudish censorship and these obscenity laws, we lag woefully behind the nations of Europe. For many years the English Government has allowed birth control information to be circulated. In France, it is not illegal. Birth control is a household term. The result has been the two-children family on the average. One sees little child labor in France and the children are well taken care of. In Spain, Italy and Germany it is not illegal and not declared obscene and indecent. In Belgium and Holland birth control information is not only not declared obscene and indecent, but is openly practised without legal restraint, Holland being in advance of all the nations by having free clinics in all its large cities, where women can get the benefit of the most advanced and enlightened information. For almost half a century we have been under the ban of a prudish censorship. We are just beginning to emerge from this inquisition.

IGNORANCE BLIGHTS ALL.

I sum up the indictment against the State on the following grounds: All on account of Comstockery the legislature has been

intimidated to pass obscenity laws, which have put the cowl of ignorance over the discussion and investigation of matters of birth control. I deny the right of the State to encroach on the rights of the individual by invading the most private and fundamental relations of men and women.

I deny the right of the State to compel the poor and disinherited to rear large families and to drive their offspring to child labor when they should be at school and at play. I deny the right of the State to exercise dominion over the souls and bodies of our women by compelling them to go into unwilling motherhood. I deny the right of the State to arm an ignorant, irresponsible and prudish censorship with the right of search and confiscation, to pass judgment on our art and literature, and I deny as well the right to hold over the entire medical profession, the legal ban of this obscenity statute. I deny the right of the State to heckle, hinder and deprive those best fitted by years of training and experience from aiding those who apply to them for vital information concerning their bodily well-being. The obscenity laws, State and Federal, as administered by Comstock and his inhuman and ignorant censorship, have driven the mother of my children into exile, separated her from her children now for almost a year, and caused untold hardship to her and to me.

Why should I not despise these obscenity laws which have created so much ignorance, increased poverty and hardship, kept me personally away from creative work as an artist and decorator, deprived me of an income for my wife and children?

The court has the physical power to send me to prison, but it cannot take away from me my convictions and ideals. They are mine. I would rather be in prison with my ideals and convictions intact, than out it, stripped of my self-respect and manhood.

In the light of the facts, then, and of the circumstances of my arrest, I ask that I be acquitted here today.

[FROM "THE NEW YORK TIMES," SEPT. 11TH, 1915.]

DISORDER IN COURT AS SANGER IS FINED.

Justice Orders Room Cleared When Socialists and Anarchists Hoot Verdict.

DEFENDS BIRTH CONTROL.

Prisoner Accuses Comstock of Violating the Law and Goes to Jail Rather Than Pay.

Turbulent scenes followed the conviction yesterday in Special Sessions of William Sanger, artist and architect, of having violated the Criminal Code in giving away a single copy of "Family Limitation," a pamphlet on birth control written by Margaret Sanger, his wife.

The announcement of his guilt brought Sanger to his feet with a denunciation of the verdict and an impassioned declaration that the court could not intimidate him.

In a second nearly everyone in the court room was upon his or her feet, cheering, shouting opinions of the judge and court, and declaring that the prisoner had been unjustly treated.

All business was suspended while court attendants with difficulty got the disturbers into the corridor, practically clearing the court room.

Before the climax came there was a heated passage between Sanger and Anthony Comstock, and the latter declared that he had been threatened with assassination if he continued the prosecution of the case. He did not say in what manner the threat had been conveyed to him, nor did he intimate who had promised to kill him.

The Sanger case has attracted much attention among sober-minded persons who believe that there should be a wide discussion of birth control, and Sanger, in the trouble which came upon him after giving a copy of the pamphlet to a Comstock agent, has had the support of Socialists and anarchists.

Long before the case was called many men and women prominent in anarchy and Socialism entered the court room, and when

Sanger was called to the bar the room was filled and a hundred more struggled to get in. Among those in the court were Alexander Berkman, Miss Elizabeth Gurley Flynn, Leonard D. Abbott, Carlo Tresca, Miss Marie Yuster, and Samuel D. Abbott. Mrs. Amos Pinchot was also present.

ADMITS MISREPRESENTATION.

When his case was called Sanger announced to Justices McInerney, Salmon and Herbert, that he intended to plead his own case. Charles J. Bamberger, an agent of the Comstock Society, testified that he had gone to see Sanger on December 19. The latter then had a studio at 10 East Fifteenth Street. He said he had represented himself to be a Mr. Heller, a friend of Mrs. Sanger, who was then abroad. Sanger had refused to give him a book, until he explained that he had the other works of Mrs. Sanger, and desired "Family Limitation" to have translated and distributed among the poor. Having convinced the architect that he was a "friend," the latter hunted among his wife's effects, found and gave him the pamphlet. Bamberger said Sanger cautioned him not to say where he got the circular, and to an offer of pay said there was no charge. Sanger refused to question the witness.

The events surrounding Sanger's arrest a month later were recited by Anthony Comstock. When he was arrested Sanger surrendered five copies of the pamphlet. When asked to question Comstock the prisoner replied that he was not going to question witnesses, but confine himself to reading a prepared statement.

"Very well," said Presiding Justice McInerney, "take the stand."

After being sworn, Sanger told of his appeal to a higher court for the right of a trial by jury, and went on:

"I am charged with violating a statute of the penal law of this State which makes it a crime to furnish information regarding the prevention of conception. The District Attorney has brought into court a Comstock agent, to whom it is charged I gave a copy of my wife's pamphlet on 'Family Limitation.' I do not deny I gave the pamphlet. I frankly admit it. Nor will Mr. Bamberger, the Comstock agent, deny he came to me under a false name and obtained the pamphlet under false pretences. I admit I broke the law, and yet I claim that in every real sense, it is the law and not I that is on trial here today."

CHARGES CRIMINAL METHODS.

Sanger entered into an account of the perfidy of Bamberger in coming to him as "Mr. Heller," and went on:

"I was trapped into handing the pamphlet in question to an agent of Comstock. This self-appointed censor of our morality and his agent did not hesitate to use criminal methods to make a criminal out of me."

"Bang," fell the Justice's gavel.

"I deny I am a criminal," continued the witness, raising his voice. There followed an interruption, during which Sanger insisted he wanted to make his statement. He continued that he thought his reputation was such that character witnesses were unnecessary. For the information of the court he said he had lived here for thirty-five years, that he was the father of three children, that he had been raised a Unitarian, and that he needed no credentials from anyone. He denied the pamphlet was indecent, and declared that it was as decent as any medical book. "I was offered a suspended sentence by Comstock if I pleaded guilty," the prisoner fairly shouted.

Again the gavel fell, and this time Justice McInerney said emphatically he was not going to have "a lot of rigmarole" on the record.

Sanger insisted that he be allowed to make his statement, and the Justice said that he would not be allowed to do so. As a way to a solution of differences Comstock was recalled to the stand.

Sanger was on his feet, brushing aside a court attendant who would have restrained him. "I say on my solemn word of honor that he did promise me a suspended sentence."

There was an interval of comparative quiet, during which the three Justices conferred and inspected the copy of "Family Limitation" which accompanied the indictment. Then the presiding Justice called upon Sanger to stand up. He said that the court found him guilty of circulating a pamphlet that was both immoral and indecent.

A MENACE TO SOCIETY.

"Such persons as you who circulate such pamphlets are a menace to society," said the Justice. "There are too many now who believe it is a crime to have children. If some of the women who are going around and advocating equal suffrage would go around and advocate women having children they would do a greater service. This, however, is my personal opinion."

Sanger insisted that he be allowed to read the statement, and he was finally told he could say what he pleased in giving ground for his reasons why sentence should not be pronounced upon him.

Continuing his statement approximately where he left off, Sanger kept on with his attack on Comstock.

"The trouble is that you think you have done nothing," commented the Presiding Justice.

"I have done absolutely nothing," came back Sanger.

"I think you must be crazy," said the Justice.

"Oh, no, I am not," said Sanger, quietly.

Two or three times more Sanger tried to read more of the five-page manuscript he held in his hand.

Finally he was quieted, and Comstock, who had been standing beside the witness enclosure audibly voicing his disbelief in the statement of Sanger, was called to the stand to tell what he knew against the prisoner's character. Like Sanger, he did not keep to his subject, but left it at once to brand Sanger as a perjurer. He denied that he had ever promised Sanger suspension of sentence. The court interrupted to ask what he knew about Sanger's character.

"Well," said Comstock loudly, "I have been told that if I prosecuted this case I would be shot. I have disregarded the threat." He added to this that he simply told the Justices of the threat that they could have all the facts before them.

DECIDED AGAINST PRISON.

As Comstock got down from the witness chair Justice McInerney leaned over the bench and told Sanger that, while he was in favor of sending him to prison, it had been decided to fine him.

"I sentence you to a fine of 150 dollars or thirty days in the City Prison," he said, in a low voice.

The prisoner waited until the last word was spoken, and then shouted: "It is indeed the law on trial here today."

The attendant tried to stop him, but he continued, his voice rising shrilly: "I will never pay that fine. I would rather be in jail with my conviction than be free at a loss of my manhood and my self-respect."

"Then," said Justice McInerney, "you will go to jail."

"This court can't intimidate me," shouted the prisoner, and the court attendants seized him and hustled him through the door to the pen and the Tombs.

At this the storm that had been gathering in the crowded court room broke. It began with a volley of hand-clapping and ended in a medley of shouts and cries. Men and women stood on the benches and waved their hats and handkerchiefs.

The three Justices, their faces red with anger, stood at the bench. The gavel of the Chief Justice went on pounding, which only marked time for the din in the room. The court attendants, reinforced by policemen, finally succeeded in getting the anarchists into the corridor.

There, for a time, the discussion was lively. It was asserted that 1,000 dollars had been raised for the publication of another edition of "Family Limitation," and this edition will carry the history of the Sanger case.

"Our contention is," said Mr. Abbott, "that no law can be right that keeps thousands in ignorance of facts that they ought to know. The knowledge that a prudish censorship would keep from the people, especially the poor, has been circulated in England and other countries."

WOMAN DEFIES THE LAW.

A very small and very young woman confessed that she had circulated many copies of the pamphlets among her classmates, and she added that, no matter what steps were taken to prevent the circulation of the new edition of "Family Limitation," they would be useless, for as fast as one circulator was arrested another would step forward and take his place.

Margaret Sanger, who wrote "Family Limitation," went to Europe after she was indicted by the Federal authorities for sending through the mail *Woman Rebel*, a monthly paper which she edited and published. She is now in Holland, and it was said by her friends after the trial that she would shortly return to this country. It is expected that she will be here by October 1, in time to plead to the charge of misusing the mails.

ACKNOWLEDGMENT.

Mr. Sanger acknowledges with thanks the co-operation and support of the New York Call, which first published his statement. He also thanks the New York Times for the account of his trial.

Additional copies of this pamphlet may be obtained from The Birth Control Review, 104 Fifth Avenue, New York City.

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of
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